



Indiana Department of Homeland Security

District Programs Information Bulletin

Date: December 23, 2009

Bulletin No: 09-002

TO: All District Administrative Coordinators
All District Coordinators
All District Fiscal Agents
All District Planning Council Members
All District Planning Oversight Committee Members
All District Response Task Force Commanders
All Emergency Management Directors
All District Planning Council Members
All District Response Task Force Commanders

From: George Thompson
General Counsel
Indiana Department of Homeland Security

Subject: Public Access Counselor Informal Inquiry 09-INF-30; Homeland Security District Planning Oversight Committees and District Planning Councils.

Purpose

This Informational Bulletin is intended to communicate Indiana's Public Access Counselor's opinion pertaining to District Planning Oversight Committee and District Planning Councils responsibilities to the Open Door Law.

General

In response to a request from DPCs and local officials, IDHS recently requested an informal opinion of the Public Access Counselor as to whether DPCs or DPOCs were subject to the Open Door Law. The legal analysis of our attorneys at IDHS indicated that they were not, but we sought an advisory opinion of the Public Access Counselor in an attempt to put the matter to rest.

If a DPC and a DPOC were to be subject to the Open Door Law, it would require their meetings to be publicly advertised. It would also require handicap accessibility to such meetings. Furthermore, any failure to comply with the Open Door Law would expose the DPC to the possibility of litigation filed by any aggrieved party who wishes to invalidate or raise a legal question about the validity of a DPC or DPOC action or decision. Perhaps most importantly, it would prevent the DPOC or DPC from going forward with the meeting unless a quorum was present to conduct business. Given the difficulty several DPOCs encountered in getting officially established, that possibility threatened to bring progress on the IDHS District Initiative to an abrupt halt.

In his December 2, 2009 opinion letter, Andrew Kossack, Indiana's newly appointed Public Access Counselor, found that DPCs and DPOCs are neither "public agencies" nor "governing bodies of public agencies" within the meaning of the Open Door Law. That being the case, they are not subject to the Open Door Law.

Mr. Kossack's opinion is based on the current state of affairs, in which DPCs and DPOCs are neither required nor specifically authorized by an Indiana statute or executive order, they do not exercise any portion of the executive or administrative power of the state, their actions are not binding on any unit of government, they are not subject to budget review by the Indiana Department of Local Government Finance or the governing body of any public agency nor are they subject to an annual audit of the State Board of Accounts. If any of those things were to change, IDHS would expect that Mr. Kossack's opinion would be different.

IDHS encourages DPCs and DPOCs to keep their meetings open to the public and to allow citizens or the media to attend them whenever they want. Providing public notice of DPC or DPOC meetings is also a practice that IDHS would encourage.

However, this opinion letter from the Public Access Counselor indicates that a DPC or DPOC is not required to do so.

Questions

Any DPC or DPOC member with questions about this subject may contact the IDHS General Counsel, George Thompson at 317-232-3497 or via email at gthompson@dhs.in.gov.